

MAR 24 2008

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
ADRIANNE ROSETTA MILLER,	)	CASE NO. 05-94670-MHM
	)	
Debtor.	)	
	)	
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ADRIANNE ROSETTA MILLER,	)	
	)	
Plaintiff,	)	
v.	)	ADVERSARY PROCEEDING
	)	NO. 06-9063
GEM FINANCIAL SERVICES, INC.,	)	
d/b/a GEM PAWNBROKERS,	)	
	)	
Defendant.	)	

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Debtor, who is proceeding *pro se*, filed this adversary proceeding seeking turnover of certain personal property, specifically two gold rings, a gold chain and a gold bracelet (collectively, the "Property"), that she had pledged to Defendant, a collateral loan broker in New York. Defendant filed a motion for summary judgment and for dismissal. Debtor filed a response *pro se*.

Defendant shows that Debtor had pawned two gold rings and a gold chain April 1, 2004, for a loan of \$175. That loan was renewed twice, each time after

Defendant had provided Debtor with notice of his intent to sell. Under New York law, McKinney's General Business Law §48 and §49, a collateral loan broker may sell an unclaimed pledge after the broker has been in possession of the property for four months. The broker must first provide 30 days' written notice to the borrower mailed to the address given at the time of the pawn of the broker's intent to sell the collateral. Defendant provided said notice to Debtor as to the rings and chain June 2, 2005. Defendant alleges that the rings and chain were sold July 5, 2005, but a copy of the advertisement for public auction of the unredeemed pledges indicates the public auction that included the rings and chain was held September 8, 2005.

Debtor's bankruptcy petition was filed July 20, 2005.

Defendant also shows Debtor had pawned a gold bracelet September 4, 2004, for a loan of \$90. That loan was renewed once after Defendant had provided Debtor with notice of his intent to sell. Defendant provided a second notice to Debtor of his intent to sell the bracelet May 18, 2005. Defendant alleges that the property was sold June 19, 2005, but a copy of the advertisement for public auction of the unredeemed pledges indicates the auction was held September 8, 2005.

Defendant asserts that the Property Debtor seeks to recover was not property of the estate because Debtor's statutory redemption period had expired before Debtor

filed her bankruptcy petition.<sup>1</sup> In support of the assertion that expiration of the redemption period is sufficient to terminate Debtor's rights to the Property, Defendant cites *Dunlap v. Cash America Pawn of Nashville*, 158 B.R. 724 (M.D. Tenn. 1993). That case, however, was based upon Tennessee law, which provides that expiration of the redemption period results in forfeiture of the pawned property to the pawnbroker. See *In re Schwalb*, 347 B.R. 726 (Bankr. D. Nev. 2006). The New York statutes applicable to the pawn transaction in this proceeding do not appear to provide for forfeiture upon expiration of the four month redemption period. Section 48 of McKinney's General Business Law provides only that a collateral loan broker may not sell the pawned property until after four months expires. Section 49 of McKinney's General Business Law requires 30 days' written notice of the broker's intent to sell the collateral.

In a state like New York, whose law does not provide for such a forfeiture and whose law does not provide a deadline within which the borrower can act to redeem the collateral, pawned property that remains unsold on the date the petition was filed would gain the benefit of §108 to extend the redemption period for 60 days. This

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<sup>1</sup> Defendant also cites §541(b)(8) for the proposition that pawned property is not property of the estate. That code section, however, was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"), and is effective only for cases filed on or after October 17, 2005. Debtor's case was filed July 20, 2005. Therefore, §541(b)(8) appears to be inapplicable in the instant case.

adversary proceeding was filed July 20, 2006, which is more than 60 days after the petition was filed. Therefore, it appears that Debtor has no grounds to seek turnover of the Property. Accordingly, it is hereby

ORDERED that Defendant's motion for summary judgment is *granted* and this adversary proceeding is *dismissed*.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Defendant's attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 20<sup>th</sup> day of March, 2008.



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MARGARET A. MURPHY  
UNITED STATES BANKRUPTCY JUDGE